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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,283	01/16/2001	Chao-Hsin Chang	67,200-355	5574

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EXAMINER

DASS, HARISH T

ART UNIT	PAPER NUMBER
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3628

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/761,283

Applicant(s)

CHANG, CHAO-HSIN

Examiner

Harish T. Dass

Art Unit

3628

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 13 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: See Continuation Sheet.

  
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SUPERVISORY PATENT EXAMINER  
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Continuation of 13. Other: In response to applicant's argument that Chou et al discloses a method for setting up an open market for negotiating the purchase and sale of excess capacity ...

"In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem."); \* Wang Laboratories Inc. v. Toshiba Corp., 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993)>; and State Contracting & Eng'g Corp. v. Condotte America, Inc., 346 F.3d 1057, 1069, 68 USPQ2d 1481, 1490 (Fed. Cir. 2003) (where the general scope of a reference is outside the pertinent field of endeavor, the reference may be considered analogous art if subject matter disclosed therein is relevant to the particular problem with which the inventor is involved). Chou et al discloses electronic commerce in a semiconductor manufacturing capacity market and the capacity is bought and sold between the players using electronic channels such as Internet. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Chou and include an auction system over the Internet (electronic commerce) to sell the same product (services) such as: manufacturing capacity to establish a price in comparative bidding a better format of selling than negotiating individually.

In response to applicant's argument that Applicants disclose and claim an auction system ..."

The secondary reference, Johnson et al, disclose an auction system for selling excess generating capacity of production (at least one specified product which is generating power) using a bidding moderator (electronic auctioneer system), and pool of bidders comprising least one bidder (see Abstract, col. 3 lines 30-37, 50-57, 6-67; col. 4 lines 14-18, 66-67; col. 5 lines 33-41; col. 6 lines 37-41 - see reseller), determining from the pool bidders comprising at least one bidder at least one winning bidder (see col. 6 lines 37-56, col. 10 lines 14-50, one bidder can be moderator who acts on behalf of the user or group of user), and at least one winning bidder (moderator), quantity least one specified product from the manufacturing facility while employing the first capacity for producing the at least specified product (Abstract; col. 1 lines 7-25; col. 3 lines 30-37, 50-57, 6-67; col. 4 lines 14-18, 66-67; col. 6 lines 37-56, col. 10 lines 14-50). It would have been obvious at the time the invention was made to a person having ordinary skill in the art a user or group of users (distributors or reseller) bid on extra capacity of a power provider, where power is needed badly and further, gain operation profitability. For example, in winter, a power distributor company in New Jersey may be willing to pay more to purchase power from a power company, say Philadelphia power with extra generating capacity, than a company in Maryland because it has higher demand for power, it can ask moderator to place higher price (see Johnson et al col. 4 line 66 to col. 5 line 2) or larger volume to obtain the power which will make the Philadelphia power to sell its extra capacity to New Jersey power company. Different types of auctions are well known such as: Dutch auction, Vickery auction, English auction, etc. It would have been obvious modify the disclosure of Johnson and add such as English auction style to help the sellers to get better deal.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, competitive bidding to establish a better price (rate) for excess production capacity and selling to buyer/reseller using an auction system [see Johnson col. 6 lines 10-36], by posting the bids on an Internet website (see Johnson et al col. 13 lines 48-52) to reach wider bidders, with less cost and timely and further, gain operation profitability.